

**THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
ASHEVILLE DIVISION  
CIVIL CASE NO. 1:20-cv-00168-MR-WCM**

**APRIL LEDFORD,**

**Plaintiff,**

**vs.**

**BYRSON CITY POLICE  
DEPARTMENT, et al.,**

**Defendants.**

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**MEMORANDUM OF  
DECISION AND ORDER**

**THIS MATTER** is before the Court on the “Motion to Dismiss by Swain County Sheriff Curtis Cochran, Swain County Sheriff’s Department, Swain County Jail, Andrew Bryant, and Hilda Arch” [Doc. 15]; “Motion to Dismiss First Amended Complaint by Defendant Tom Sutton” [Doc. 23]; the Magistrate Judge’s Memorandum and Recommendation [Doc. 36] regarding the disposition of said motions; the Plaintiff’s “Answer to Memorandum and Recommendation” [Doc. 37]; the Plaintiff’s “Motion to Dismiss Claims Against Daniel Pearson and Beth MacDonald” [Doc. 41]; and the Magistrate Judge’s Memorandum and Recommendation [Doc. 42] regarding the Plaintiff’s motion.

Pursuant to 28 U.S.C. § 636(b) and the standing Orders of Designation of this Court, the Honorable W. Carleton Metcalf, United States Magistrate Judge, was designated to consider the “Motion to Dismiss by Swain County Sheriff Curtis Cochran, Swain County Sheriff’s Department, Swain County Jain, Answer Bryant, and Hilda Arch” [Doc. 15] and the “Motion to Dismiss First Amended Complaint by Defendant Tom Sutton” [Doc. 23] (collectively “the Defendants’ Motions to Dismiss”); and Plaintiff’s “Motion to Dismiss Claims Against Daniel Pearson and Beth Macdonald” (“Plaintiff’s Motion to Dismiss”) [Doc. 41] and to submit recommendations for the disposition.

On March 12, 2021, the Magistrate Judge issued a Memorandum and Recommendation, recommending that the Defendants’ Motions to Dismiss be granted [Doc. 36]. In the Memorandum and Recommendation, the Magistrate Judge advised the Plaintiff that “unless good cause is shown for her failure to effect service of the Summonses and the Amended Complaint on [Defendants] Pearson and McDonald, Plaintiff’s action against these Defendants will be dismissed without prejudice.” [Doc. 36 at 24]. The parties were advised that any objections to the Magistrate Judge’s Memorandum and Recommendation were to be filed in writing within fourteen (14) days of service.

On March 26, 2021, the Plaintiff filed her “Answer to Memorandum and Recommendation,” in which the Plaintiff “agree[d] to the dismissal of claims against” Defendants Cochran, Swain County Sheriff’s Department, Swain County Jail, Bryant, Arch, and Sutton. [Doc. 37 at 2-3]. The Plaintiff included in her summary of “remaining claims” a claim for excessive force against Defendant Pearson. [Id. at 2]. The Defendant replied on April 1, 2021, treating the Plaintiff’s “Answer” as an objection to the extent that the Plaintiff still pursued claims against Defendant Pearson. [Doc. 40 at 1-2].

On April 4, 2021, the Plaintiff filed her Motion to Dismiss Claims against Defendants Pearson and McDonald. [Doc. 41]. On April 23, 2021, the Magistrate Judge issued a Memorandum and Recommendation, recommending the Plaintiff’s Motion to Dismiss be granted. [Doc. 42]. The parties were advised that any objections to the Magistrate Judge’s Memorandum and Recommendation were to be filed in writing within fourteen (14) days of service. The Defendants did not object to either the Motion to Dismiss or the Memorandum and Recommendation.

After a careful review of the Memoranda and Recommendations, the Court concludes that the Magistrate Judge's proposed conclusions of law are correct and are consistent with current case law. In light of the Defendants’ lack of opposition regarding the Plaintiff’s Motion to Dismiss, the Court

hereby accepts the Magistrate Judge's recommendation that the Plaintiff's Motion to Dismiss should be granted.

In light of the Plaintiff's Motion to Dismiss, the Court concludes that the Plaintiff has no remaining "objections" to the Magistrate Judge's Memorandum and Recommendation regarding the Defendants' Motions to Dismiss and any objection is now moot. The Court accepts the Magistrate Judge's recommendation that the Defendants' Motions to Dismiss be granted. The Magistrate Judge's recommendation directing the Plaintiff to show cause as to why the Plaintiff has not served process on Defendants Pearson and McDonald is now moot.

### **ORDER**

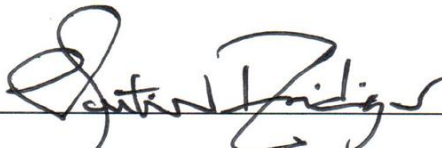
**IT IS, THEREFORE, ORDERED** that the Magistrate Judge's Memorandum and Recommendation [Doc. 42] regarding the Plaintiff's Motion to Dismiss is **ACCEPTED**; the Plaintiff's Motion to Dismiss Defendants Pearson and McDonald is **GRANTED** [Doc. 41]; and the claims against Defendants Pearson and McDonald are **DISMISSED**.

**IT IS FURTHER ORDERED** the Plaintiff's Answer to the Memorandum and Recommendation, as construed as an objection, [Doc. 37] is **DENIED AS MOOT**; the Memorandum and Recommendation regarding the Defendants' Motions to Dismiss [Doc. 36] is **ACCEPTED AS STATED**;

Defendants Arch, Bryant, Cochran, Swain County Jail, and Swain County Sheriff's Department's Motion to Dismiss [Doc. 15], and Defendant Sutton's Motion to Dismiss [Doc. 23] are **GRANTED**; and the claims against Defendants Bryant, Swain County Sheriff's Department, Swain County Jail, Sheriff Cochran, Arch, and Sutton are **DISMISSED**.

**IT IS SO ORDERED.**

Signed: June 21, 2021

  
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Martin Reidinger  
Chief United States District Judge

